No. 354.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1939.

FEDERAL HOUSING ADMINISTRATION, REGION NO. 4,
STATE DIRECTOR RAYMOND FOLEY,
Petitioner,

vs.

RUTH BURR, Doing Business as SECRETARIAL
SERVICE BUREAU.

On Writ of Certiorari to the Supreme Court of the State of Michigan.

BRIEF AND ARGUMENT OF RESPONDENT.

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INDEX.

Cases Cited.

Statute Cited.

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State of Michigan.

BRIEF AND ARGUMENT OF RESPONDENT.

OPINION BELOW.

The opinion of the Supreme Court of Michigan (R. pp. 12-15) is reported at 289 Mich. 91, 286 N. W. 169.

QUESTION PRESENTED.

Whether Federal Housing Administration is generally subject to suit in state courts.

BRIEF, OR SUMMARY, OF ARGUMENT.

I.

Congress has given unlimited consent to suits against Federal Housing Administration in state and federal courts.

Keifer & Keifer v. Reconstruction Finance Corporation et al., 306 U. S. 381, 59 S. Ct. 516;
National Housing Act, 12 U. S. C. A. 1702.

II.

Whether Federal Housing Administration, being generally subject to suit, may be sued in garnishment under the statutes of Michigan is a question of the local law of Michigan, and its determination by the Supreme Court of Michigan binds all other courts.

Federal Land Bank v. Priddy, 295 U. S. 229, 55 S. Ct. 705;
Keifer & Keifer v. Reconstruction Finance Corp. et al., 306 U. S. 381, 59 S. Ct. 516.

III.

The unlimited consent to suits against Federal Housing Administration includes consent to the civil action in garnishment provided by the statutes of the State of Michigan.

Keifer & Keifer v. Reconstruction Finance Corp. et al., 306 U. S. 381, 59 S. Ct. 516;
Federal Land Bank v. Priddy, 295 U. S. 229, 55 S. Ct. 705;
National Housing Act, 12 U. S. C. A. 1702.

IV.

Federal Housing Administration is a Corporation owned by the United States and engaged in the insurance business.

Keifer & Keifer v. Reconstruction Finance Corp. et al., 306 U. S. 381, 59 S. Ct. 516;
Dartmouth College v. Woodward, 4 Wheat. 636;
Liverpool and London Life and Fire Ins. Co. v. Oliver, Treasurer of Mass., 10 Wall. 566, 19 L. ed. 1029;
National Housing Act, 12 U. S. C. A. 1702 et seq.

V.

The argument that garnishment of Government-owned agencies entails added burdens or inconvenience to such agencies suggests no valid reason why the courts should modify the expressed will of Congress consenting thereto.

VI.

The fact that Congress gave unlimited consent to suits against Federal Housing Administration in state courts, but set up no statutory procedure to govern them, is clear indication of an intent that the civil procedure provided by state laws was intended by Congress to govern such proceedings.

Federal Land Bank v. Priddy, 295 U. S. 229, 55 S. Ct. 705.

ARGUMENT.

I. Congress has given unlimited consent to suits against Federal Housing Administration in state and federal courts.

Section 1 of the National Housing Act, 12 U. S. C. A. 1702, provides:

> "The President is authorized to create a Federal Housing Administration, all of the powers of which shall be exercised by a Federal Housing Administrator. * * * The Administrator shall, in carrying out the provisions of this title and titles II and III, be authorized, in his official capacity, to sue and be sued in any court of competent jurisdiction, State or Federal."

In Keifer & Keifer v. Reconstruction Finance Corporation, 306 U. S. 381, 59 S. Ct. 516, this court held that the sue-and-be-sued clauses in the acts creating or authorizing government-owned agencies constitute an unlimited consent to suit against such agencies. By its opinion the Court there swept aside the contention that instrumentalities of government are inherently immune from suit, saying "the government does not become the conduit of its immunity in suits against its agents or instrumentalities merely because they do its work. * * * Congress has embarked upon a generous policy of consent for suits against the government" in actions of all kinds. And it was there asserted that Congress has created forty corporations which are instrumentalities of government and which are fully subject to suit, regardless of their relationship to the government. In listing the forty corporations in footnote 3 of the opinion the Court stated that one of these is Federal Housing Administration.

II. Whether Federal Housing Administration, being generally subject to suit, may be sued in garnishment under the statutes of Michigan is a question of the local law of Michigan and its determination by the Supreme Court of Michigan binds all other courts.

Immunity from suit for governmental agencies does not exist unless expressly provided by Congress. Keifer & Keifer v. Reconstruction Finance Corporation et al., 306 U. S. 381, 59 S. Ct. 516. Hence, such agencies are not different from other persons or entities so far as suits against them are concerned.

Since Federal Housing Administration is generally subject to suit in state courts, like other corporations, whether it may be required to respond to any particular type of statutory action in the states is to be determined from the state statute involved and a consideration of the nature and purpose of the action which that statute creates. This calls for a construction of the statutory law of the state, on which the ruling of the highest court of that state is the ultimate touchstone. The judgment of no other court may be substituted for it.

This clearly appears from Federal Land Bank v. Priddy, 295 U. S. 229, 55 S. Ct. 705. That was a suit in the courts of Arkansas against the Federal Land Bank in which an attachment was sued out on the ground the bank was a foreign corporation. The bank contended it was not a corporation, but an instrumentality of government, and, as such, immune from the attachment provided by the statute of the state. The state court disallowed this claim, holding the bank is a foreign corporation and subject to the statutory attachment provided by state law. This Court, holding the Bank is an instrumentality of government, nevertheless said:

"The ruling of the state Supreme Court, that peti-

tioner is a foreign corporation within the meaning of the Arkansas attachment statute, and that the attachment was authorized by local law, presents only a state question, which is not open for review here."

III. The unlimited consent to suits against Federal Housing Administration includes consent to the civil action in garnishment provided by the statutes of the State of Michigan.

The Supreme Court of Michigan in this case held in that state "A writ of garnishment is a civil process at law, in the nature of an equitable attachment. The usual test as to the liability of a garnishee is whether the principal defendant could have maintained an action against the garnishee to recover the property in question" (R. p. 13). This statement of the nature and purpose of the garnishment action in Michigan may not be questioned here.

Is such a proceeding contemplated by or included in the general consent to suit expressed in the Act, 12 U. S. C. A. 1702, or the unlimited consent which this court holds is implicit in the general policy of the law? To assert that it is not, it seems to us, is to deny the very essence of this court's ruling in Keifer & Keifer v. Reconstruction Finance Corp. et al., 306 U. S. 381, 59 S. Ct. 516.

To hold that the consent extends to suits of every kind, save one—and that the single exception is the proceeding in garnishment—"would make application of a steadily growing policy of governmental liability contingent upon irrelevant procedural factors." The Keifer case, supra.

It is asserted by the petitioner that the Supreme Court of Michigan erred "in failing to hold that the 'sue-and-be-sued' clause of the Act was limited solely to suits arising out of the carrying out of the provisions of Titles I, II and III of the Act" (Brief, p. 5).

This is the doctrine which was rejected by this Court in Keifer's case, supra. There it was contended, likewise,

that the consent to suits against Home Owners' Loan Corporation was limited solely to suits arising out of the carrying out of the Act and that therefore suits on contracts which Home Owners' Loan Corporation was authorized to make were permitted, but suits on torts were not. Said the Court:

> "Regional claims immunity in any event because Congress has not subjected it to suit 'in tort.' It is assumed that the present action is not one upon a contract, express or implied, and therefore outside the purview of 'to sue and be sued.' The premise is not valid, nor does the conclusion follow.
>
> "In light of these statutes it ought not to be assumed that when Congress consented 'to suit' without qualification, the effect is the same as though it had written 'in suits on contract, express or implied, in cases not sounding in torts.' No such distinction was made by Congress, and no such interpolation into statutes has been made in cases affecting government corporations incorporated under state law or that of the district of Columbia. There is equally no warrant for importing such a distinction here. To do so would make application of a steadily growing policy of governmental liability contingent upon irrelevant procedural factors."

Thus does the contention that the consent to suit is "limited solely to suits arising out of the carrying out of the Act" fail. But even if the sue-and-be-sued clause be given the limited effect contended for, the present action in garnishment is included in the consent.

The record shows the judgment was for salary earned by Brooks, the principal defendant, as an employee of Federal Housing Administration (pp. 6, 11).

The Act (12 U. S. C. A. 1702) authorized Federal Housing Administrator to employ "such officers and employees as he may find necessary, and * * * fix their compensa-

tion." Thus the Administrator was expressly authorized to enter into contracts of employment with persons whose services were needed in carrying out the purposes of Federal Housing Administration.

If he failed to pay the compensation agreed upon in such contracts of employment, the employee, clearly, could maintain a suit, in state or federal court, to recover his salary. This would be a simple suit on a contract which the law expressly authorized Federal Housing Administration to make.

So the garnishment here is a suit or proceeding to recover the salary earned by Brooks, and is based on the contract of employment with Brooks. Under the garnishment statute the judgment creditor succeeds to his debtor's right and stands in his place.

If it be held Federal Housing Administration cannot be sued in garnishment for Brooks' salary, then, it seems to us, it must also be held Brooks could not sue to recover his salary. In either case the action is the same, is based on the same right and seeks the same result.

Petitioner says "it is the general policy of the Federal Government not to account to strangers" (Brief, p. 31). From this it is argued the Government's agent may not be garnished by "a stranger" who has no privity with the agent.

The obvious answer to this is that Congress has the power, which we think it has wisely exercised, to modify that policy. Moreover, if this be held ground for denying the right to proceed in garnishment, by a parity of reasoning, it will be impossible for the assignee of a note or one of the insurance policies or other contract issued by Federal Housing Administration to sue upon it. Thus, no one but the original party to a contract can acquire rights in it which may be vindicated in a judicial proceeding. This again makes the right of suit "contingent upon irrelevant procedural factors."

That Federal Housing Administration should be subject to garnishment is indicated as a matter of sound public policy. With large numbers of persons employed by newly-created Government-owned agencies, the courts should, unless clearly prevented by law, avoid any interpretation which might make of such agencies a refuge for defaulting debtors, who may resort to Government immunity to avoid payment of judgments against them.

Congress has provided the bankruptcy court as a sanctuary for those unable to pay, where they may be discharged by turning over to their creditors their accumulated assets. Those who can pay should not be permitted to use employment by Government-owned agencies as a shield to avoid payment without relinquishing their assets. Such practice may readily result in wide-spread public scandal. It would certainly not conform to what the opinion in the Keifer case so aptly calls "the expanding conception of public morality regarding governmental responsibility."

In the Keifer case this Court pointed out that Congress had, without qualification, consented "to suit," and that the unqualified language used could not be interpreted as though Congress had said "in suits on contract, express or implied, in cases not sounding in tort."

Neither is there to be found in the unqualified consent to suit against Federal Housing Administration the implication "in suits on contracts or tort, but not in suits on contract of employment when brought by a creditor under garnishment."

Whether consent to suit against an instrumentality of the Government includes garnishment under the state statute is ruled on principle in Federal Land Bank v. Priddy, 295 U. S. 229, 55 S. Ct. 705. There the action in the state court was against the Federal Land Bank, and a writ of attachment was issued on the ground the Bank was a

foreign corporation. The Bank defended in the state court on the theory it was not a corporation, but an instrumentality of government, and as such not subject to attachment under the state law.

This Court declared the Bank is an instrumentality of government, but the unlimited consent to suit found in the statute makes it liable to the attachment process in the state court. The similarity of attachment and garnishment, as proceedings ancillary to or in aid of other process, is apparent and requires no demonstration.

Petitioner says it will be harassed by many garnishments if it be held subject to such proceedings, and will not be able to protect itself as private businesses do by discharge of garnished employees (Brief, p. 27). We know of no law or principle which supports this assertion. If the agency be held liable to garnishment it may easily protect itself by following the established practice of many departments of the government which do not harbor employees against whom unsatisfied judgments are outstanding.

IV. Federal Housing Administration is a corporation owned by the United States and engaged in the insurance business.

In the petition for the writ of certiorari it is said Federal Housing Administration "is an unincorporated agency of the United States, operating with funds supplied wholly by the United States," as a basis for the argument that as such it may not be sued as garnishee.

Of this we believe it may be appropriately said, in the language of the Court in Keifer's case, "the premise is not valid, nor does the conclusion follow."

The corporate or noncorporate character of Federal Housing Administration is probably not of controlling importance, since the general consent to suit does not depend

on its being a corporation. Its suability is the same whether it is or is not a corporation.

But a consideration of the statute creating it, and the obvious Congressional purpose underlying it, leads inevitably to the conclusion it is a corporation.

The Act says (12 U. S. C. A. 1702):

> "The President is authorized to create a Federal Housing Administration, all of the powers of which shall be exercised by a Federal Housing Administrator."

We believe the legal consequence of this language is no different than if Congress had said:

> "The President is authorized to create a Federal Housing *Corporation*, all of the powers of which shall be exercised by a *director*."

And if this latter language had been used, no question of the corporate character of the agency would be raised. It is a legal entity, created by express statutory authority, with all the attributes, characteristics and powers of a corporation, and is controlled by a one-man board of directors.

What is and what is not a corporation, as was ruled by Chief Justice Marshall in the Dartmouth College case (Dartmouth College v. Woodward, 4 Wheat. 636), is to be determined by the nature of the entity and not by what it is called. An identical case is that of Liverpool and London Life and Fire Insurance Co. v. Oliver, Treasurer of Massachusetts, 10 Wall. 566, 19 L. ed. 1029.

That plaintiff was organized, by deed of settlement and special acts of Parliament, to engage in the insurance business. The creative act expressly provided it should not be a corporation. When it engaged in business in Massachusetts that state sought to collect taxes imposed on insurance corporations by the state law. The defense

tax. The act of Parliament creating it and declaring it was not a corporation was invoked in support of this defense.

But this Court, after outlining the powers given the entity by the act of its creation, said of this:

> "It will be seen by this reference to the powers of the Association, as organized under the deed of settlement, legalized and enlarged by the Acts of Parliament, that it possesses many, if not all, the attributes generally found in corporations for pecuniary profit which are deemed essential to their corporate character.
>
> "1. It has a distinctive and artificial name by which it can make contracts.
>
> "2. It has a statutory provision by which it can sue and be sued in the name of one of its officers as representative of the whole body, which is bound by the judgment rendered in such suit.
>
> "3. It has provision for perpetual succession. * * *
>
> "4. Its existence as an entity apart from the shareholders is recognized by the Act of Parliament. * * *
>
> "*It is said that the fact that there is no provision either in the deed of settlement or the Act of Parliament for the Company suing or being sued in its artificial name forbids the corporate idea. But we see no real distinction in this respect between an Act of Parliament which authorized suits in the name of Liverpool and London Fire and Life Insurance Co., and that which authorized suit against that Company in the name of its principal officer.* If it can contract in the artificial name and sue and be sued in the name of its officers on those contracts, it is in effect the same, for process would have to be served on some such officer even if the suit were in the artificial name. (Italics supplied.)
>
> "It is also urged that the several acts of Parliament we have mentioned expressly declare that they shall not be held to constitute the body a corporation.

"But whatever may be the effect of such declaration in the courts of that country, it cannot alter the essential nature of a corporation or prevent the courts of another jurisdiction from inquiring into its true character, whenever that may come in issue.

* * * * * * *

"We have no hesitation in holding that, as the law of corporations is understood in this country, the Association is a corporation. * * *"

There is, of course, a difference in that Federal Housing Administration, being owned by the government, is a public corporation, whereas, the insurance company involved in the case cited was a private corporation. But the essential attributes of each are the same. Federal Housing Administration, being an invisible, intangible creature of the law, with power to contract, lend and borrow money, sue and be sued, acquire and own property, and be subject to state taxation, etc., is a body corporate. The fact it has no provision for issuance of capital stock or election of multiple directors does not affect its character as such. These features are also lacking in the corporation considered in Keifer's case, supra, as they are in innumerable boards, commissions, districts, counties, cities, executive departments and the United States of America, which are held to be corporations.

In a footnote to the Keifer case it is stated that Federal Housing Administration is a corporation and one that is suable as any other corporation. It is said by the petitioner that both the statute and the footnote to the Keifer opinion recognize a distinction between the Administration as a legal entity and the Administrator, who, the act says, "may sue or be sued." It is a distinction without a difference, as shown also by that part of this court's opinion in the Liverpool and London Life and Fire Insurance Co. case, supra, appearing in *Italics*, where the same argument was rejected. In this relation, we observe that it is the

"Administration" that was created, "all of the powers of which shall be exercised by the Administrator." All of the powers thus belong to the Administration. The exercise of them alone belongs to the person named administrator.

To hold here that in creating Federal Housing Administration Congress intended the creature to be something other than a corporation, while thirty-nine other similar agencies are expressly denominated "corporations," as was said in another relation in the Keifer case, "is to impute to Congress a desire for incoherence in a body of affiliated enactments and for drastic legal differentiation where policy justifies none." The further comment there is also pertinent: "A fair judgment of the statute in its entire setting relieves us from making such an imputation of caprice."

A due regard for the legislative purpose leads also to this result: Manifestly when Congress said (12 U. S. C. A. 1702, as amended August 23, 1935), "The administrator shall * * * be authorized in his official capacity, to * * * be sued in any court of competent jurisdiction, *state* or federal," it intended and believed that consent would be effective.

The whole of the act shows clearly the agency was to have its office at the seat of government and engage in nation-wide activities. Obviously suits such as were consented to might arise in any state, such as Michigan. How could the courts of Michigan obtain jurisdiction of the administrator in person? Must those who have claims necessitating suit file them in the District of Columbia? If so, what is the meaning and effect of the provision for suit in state courts? Or must litigants in the several states await a fortuitous time for the commencement of suit when the administrator will personally venture inside their respective states? Can it be said Congress, in enacting the law, was in such capricious mood that it

provided a substantial right but guarded against any effective use or enjoyment of it?

These questions suggest their own obvious answers. Congress undoubtedly thought it had not only established the right, but provided a practical remedy for its enforcement. We believe that Congress, having in mind the rule that a legal entity which has the attributes of a corporation is in fact a corporation, knew that it had provided for a corporation and knew that into whatever territorial jurisdiction it might go it would carry its inherent character and be subject to the local procedural and service statutes applicable to corporations.

In this view of the character of the agency, the legislative purpose is effectuated. Any contrary ruling would result only in frustration of the Congressional intent.

Neither is it accurate to say that Federal Housing Administration operates "with funds supplied wholly by the United States." It is true the original, or capital, funds were supplied by loans from Reconstruction Finance Corporation. But we believe the Court may judicially notice an official pronouncement of the Federal Housing Administration (see Appendix), dated and published October 28, 1939, in which it is said Federal Housing Administration has annual income from insurance premiums of $22,000,000, with total expenses of $13,500,000, resulting in earned surplus from its insurance enterprises of $8,500,000 annually.

V. The argument that garnishment of Government-owned agencies entails added burdens or inconvenience to such agencies suggests no valid reason why the courts should modify the expressed will of Congress consenting thereto.

The petitioner says if garnishment of Government-owned agencies is permitted, additional accounting, bookkeeping and legal services will be required by the agencies. This is obviously true. It is also true, and equally ob-

vious, that these added burdens or inconveniences are not peculiar to garnishment actions, but that any type of action consented to will cause similar consequences in some degree.

A result so certain to follow a general consent to suits of all kinds must have been in contemplation by the lawmaker when the consent was given. And Congress presumably concluded that the countervailing benefits of the policy decided on were equal or superior to the burdens to be assumed.

Howbeit, Congress is the policy-making authority, and the argument that the policy adopted is unduly burdensome to the agencies should be made to Congress. The Courts should not alter the law or refuse to give it effect because of a belief Congress has adopted an unwise or misguided policy.

There is nothing in the record to show or in the argument to indicate that such suits would interfere with or prevent the functioning of the agency.

VI. The fact that Congress gave unlimited consent to suits against Federal Housing Administration in state courts, but set up no statutory procedure to govern them, is clear indication of an intent that the civil procedure provided by state laws was intended by Congress to govern such proceedings.

Petitioner says if garnishment of Governmental agencies is to be permitted, "a statutory scheme" for effectuating it is an indispensable requisite (p. 28 et seq. of brief). And, in support of the assertion, he points to the somewhat divers statutory provisions respecting garnishments in the several states.

We believe the existence of time-tested and well-understood civil codes (including garnishment statutes) in the states is the all-sufficient reason for Congress' failure to prescribe such codes. The general consent to suits in state

courts, where full procedural codes are in operation, makes unnecessary a special code for suits against Governmental agencies. The establishment by Congress, in the Housing Act, of procedural codes for the state courts where suits may be brought would create intolerable confusion in such courts.

Congress no doubt had in mind what this court said in Federal Land Bank v. Priddy, 295 U. S. 229, 55 S. Ct. 705, where it was held general consent to suit against an agency in the court of Arkansas brought into operation the procedural laws of that state and made the agency liable to the attachment proceeding there provided.

Congress realized that Michigan has a garnishment statute, as Arkansas has an attachment statute. And we believe Congress intended that under the rule announced in the Federal Land Bank case, supra, suits against Federal Housing Administration in Michigan should be governed by the Michigan code, including the garnishment statute.

CONCLUSION.

We respectfully submit that:

1. Federal Housing Administration is subject to suit in state courts like any other natural or legal person.

2. This includes the civil action in garnishment, where the state statute so provides.

3. The decision of the Michigan court that Federal Housing Administration is such an entity as the statute applies to is a final determination of that question because it is a judicial construction of the Michigan statute. The decision of Michigan's Supreme Court should be affirmed.

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GUS O. NATIONS,
Attorneys for Respondent.

APPENDIX.

Public Statement Issued by Federal Housing Administration, October 28, 1939.

No. 398

For Release in Papers of Saturday Afternoon, October 28, or Sunday Morning, October 29, 1939.

FEDERAL HOUSING ADMINISTRATION
1001 Vermont Avenue, N. W.
Washington, D. C.

Washington, D. C., October 28—The Federal Housing Administration will be entirely self-supporting in the next fiscal year, even to the extent of adding a substantial amount to its insurance reserves, Administrator Stewart McDonald announced today.

Estimates of the Administration's income in the year beginning July 1, 1940, show revenues of more than $22,000,000. This amount will be sufficient to cover expenses which probably will be about the same as this year, or $13,860,000, and to add more than $8,500,000 to the Mortgage Insurance Fund and the Housing Insurance Fund, maintained to meet possible losses on mortgage insurance.

Income of the FHA has been rising steadily, Mr. McDonald said; next year it will take a further jump due to the growing volume of mortgage insurance business and the institution of an insurance premium for lenders under the Title I modernization and repair loan program. At the same time, increased efficiency will permit the FHA to conduct its operations without increase in cost.

Up to now the FHA has paid a major part but not all of its operating expenses out of income. The remainder,

in a decreasing amount, has been paid by the Reconstruction Finance Corporation upon the authorization of Congress. This was done to enable the FHA to maintain offices in sparsely settled states where the volume of business was not sufficient to put the FHA on a completely self-sustaining basis while it was building up its insurance reserves out of income.

Thus, for the first time the FHA will not need assistance from any outside source in the next fiscal year. Congress will not be called upon to authorize any expenditure by the RFC for the FHA's expenses and will merely have to approve the FHA's employment of its own funds toward this purpose.

The largest share of the FHA's income in the next fiscal year will come from insurance premiums paid on mortgages already in effect; this, it is estimated, will exceed $9,000,000. In addition, initial insurance premiums on mortgages written during that year will amount to an estimated $3,500,000. Fees received for the examination of mortgage loan insurance applications are estimated at more than $3,600,000. Premiums from borrowers in order to pay off mortgages in advance of maturity will total about $500,000. Premiums and fees paid on large-scale housing mortgages will total about $1,500,000, while fees and premiums paid on Title I modernization loans will exceed $3,000,000. Income on investments will amount to about $900,000, bringing aggregate income to more than $22,000,000.

Expenses will be paid out of the Mortgage Insurance Fund and the Housing Insurance Fund and out of Title I premiums. There will be a surplus after these expenses are paid, which will approximate $8,500,000 and which will be added to the Insurance Funds.

P. 3

SUPREME COURT OF THE UNITED STATES.

No. 354.—October Term, 1939.

Federal Housing Administration, Region No. 4, State Director Raymond Foley, Petitioner,
vs.
Ruth Burr, doing business as Secretarial Service Bureau.

On Writ of Certiorari to the Supreme Court of the State of Michigan.

[February 12, 1940.]

Mr. Justice Douglas delivered the opinion of the Court.

The question presented here is whether the Federal Housing Administration is subject to garnishment for moneys due to an employee. The Supreme Court of the State of Michigan held that it was. 289 Mich. 91. We granted certiorari in view of the importance of the problem and the confused state of the authorities on the right to garnishee recently created agencies or corporations of the federal government [1]

In 1930 respondent obtained final judgment in Michigan against one Heffner and one Brooks. In 1938 petitioner was served with a writ of garnishment issued by the Michigan court.[2] Petitioner appeared and filed an answer and disclosure stating that Brooks was no longer connected with it due to his death subsequent to service of the writ but admitting that it owed Brooks at the time of his death $71.11. Its answer further asserted that it was "an agency of the United States Government and is, therefore, not subject to garnishee proceedings." On motion of respondent judgment was

[1] Garnishment of wages due an employee of the United States Shipping Board Merchant Fleet Corporation was disallowed in McCarthy v. United States Shipping Board Merchant Fleet Corp., 53 F. (2d) 922. *Contra:* Haines v. Lone Star Shipbuilding Co., 268 Pa. 92. As to the Home Owners' Loan Corporation, a similar conflict of decisions has arisen. That it is not subject to garnishment see Home Owners' Loan Corp. v. Hardie & Caudle, 171 Tenn. 43. And see Manufacturer's Trust Co. v. Ross, 252 A. D. 292. That it is subject to garnishment see Central Market, Inc. v. King, 132 Neb. 380; Gill v. Reese, 53 Oh. App. 134; McAvoy v. Weber, 198 Wash. 370.

[2] Mich. Stat. Ann. (1938) § 27.1855 *et seq.*

entered against petitioner for the amount of its indebtedness to Brooks and execution was allowed thereunder. On appeal to the Supreme Court of Michigan that judgment was affirmed.

The problem here is unlike that in *Buchanan* v. *Alexander*, 4 How. 20, where creditors of seamen of the frigate Constitution were not allowed to attach their wages in the hands of a disbursing officer of the federal government. That ruling was derived from the principle that the United States cannot be sued without its consent. There no consent whatsoever to "sue and be sued" had been given. Here the situation is different. Sec. 1 of Title I of the National Housing Act (Act of June 27, 1934, c. 847; 48 Stat. 1246) authorized the President "to create a Federal Housing Administration, all of the power of which shall be exercised by a Federal Housing Administrator." That section was amended in 1935 (Act of August 23, 1935, c. 614; 49 Stat. 684, 722) by adding thereto the provision that "The Administrator shall, in carrying out the provisions of this title and titles II and III, be authorized, in his official capacity, to sue and be sued in any court of competent jurisdiction, State or Federal."

Since consent to "sue and be sued" has been given by Congress, the problem here merely involves a determination of whether or not garnishment comes within the scope of that authorization. No question as to the power of Congress to waive the governmental immunity is present. For there can be no doubt that Congress has full power to endow the Federal Housing Administration with the government's immunity from suit or to determine the extent to which it may be subjected to the judicial process. *Federal Land Bank* v. *Priddy*, 295 U. S. 229; *Keifer & Keifer* v. *Reconstruction Finance Corporation*, 306 U. S. 381.

As indicated in *Keifer & Keifer* v. *Reconstruction Finance Corporation*, *supra*, we start from the premise that such waivers by Congress of governmental immunity in case of such federal instrumentalities should be liberally construed. This policy is in line with the current disfavor of the doctrine of governmental immunity from suit, as evidenced by the increasing tendency of Congress to waive the immunity where federal governmental corporations are concerned. *Keifer & Keifer* v. *Reconstruction Finance Corporation*, *supra*. Hence, when Congress establishes such an agency, authorizes it to engage in commercial and business transactions with the public, and permits it

to "sue and be sued", it cannot be lightly assumed that restrictions on that authority are to be implied. Rather if the general authority to "sue and be sued" is to be delimited by implied exceptions, it must be clearly shown that certain types of suits are not consistent with the statutory or constitutional scheme,[3] that an implied restriction of the general authority is necessary to avoid grave interference with the performance of a governmental function, or that for other reasons it was plainly the purpose of Congress to use the "sue and be sued" clause in a narrow sense. In the absence of such showing, it must be presumed that when Congress launched a governmental agency into the commercial world and endowed it with authority to "sue or be sued", that agency is not less amenable to judicial process than a private enterprise under like circumstances would be.

Clearly the words "sue and be sued" in their normal connotation embrace all civil process incident to the commencement or continuance of legal proceedings. Garnishment and attachment commonly are part and parcel of the process, provided by statute, for the collection of debts.[4] In Michigan a writ of garnishment is a civil process at law, in the nature of an equitable attachment. See *Posselius* v. *First National Bank*, 264 Mich. 687. But however it may be denominated, whether legal or equitable,[5] and whenever it may be available, whether prior to[6] or after final judgment,[7] garnishment is a well-known remedy available to suitors. To say that Congress did not intend to include such civil process in the words "sue and be sued" would in general deprive suits of some of their efficacy. Hence, in absence of special circumstances, we assume that when Congress authorized federal instrumentalities of the type here involved, to "sue and be sued" it used those words in

[3] Cf. Porto Rico v. Rosaly, 227 U. S. 270.

[4] See Shinn, Attachment & Garnishment, Chs. I, XXIII. As to garnishment of wage claims, see Sturges & Cooper, Credit Administration and Wage Earner Bankruptcies, 42 Yale L. Journ. 487, 503 *et seq.*

[5] Cf. Williams v. T. R. Sweat & Co., 103 Fla. 461; Compagna v. Automatic Electric Co., 293 Ill. App. 437, with Commercial Investment Trust, Inc. v. William Frankfurth Hardware Co., 179 Wis. 21; Diamond Cork Co. v. Maine Jobbing Co., 116 Me. 67.

[6] Col. Code Civ. Proc., ch. 7, § 129; Deering's Calif. Code Civ. Proc., § 543.

[7] N. Y. Civ. Prac. Act, § 684; Purdon's Penn. Stat. § 2994. In Michigan no garnishment for money owing the principal defendant on account of labor performed by him shall be commenced until after judgment has been obtained against such principal defendant. Mich. Stat. Ann., § 27.1855.